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REMARKS

Claims 1-24 are pending in the present application. Previously added claims 21-24 are canceled without prejudice. In the Office Action mailed May 21, 2003, the Examiner rejected claims 1, 3-8, 16-20, and 22-24 under 35 U.S.C. §102(b) as being anticipated by OMEGAMARKER® Temperature Test Kit. The Examiner next rejected claims 2, 10-15, and 21 under 35 U.S.C. §103(a) as being unpatentable over OMEGAMARKER® in view of Tabachnik (USP 4,468,146). Claims 1 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over OMEGAMARKER® in view of Kirk (USP 3,564,668).

The Examiner objected to claim 7 citing the insufficient antecedent basis for the limitation "the ridges of the curved ends of the longitudinal member". Applicant has amended claim 7, as suggested by the Examiner, to replace the term "ridges" with the term "hooks". Such suggestion is appreciated. As such, applicant believes claim 7, as amended, overcomes the Examiner's objection.

The Examiner rejected claims 1, 3-8, 16-20, and 22-24 under 35 U.S.C. §102(b) as being anticipated by OMEGAMARKER® stating that OMEGAMARKER® discloses a one-piece "connector" physically connecting the first and the second indicator sticks, the connector being the container case in which the indicator sticks are contained. The Examiner further states that:

The OMEGAMARKER® also includes in the connector/container case ribs for holding the indicator sticks in position, each of said ribs considered to be longitudinal member having curved ends with hooks configured to secure the first and second indicator stick housing to the connector/container case and to prevent rotation of the first and second indicator stick housings. The first and second indicator stick housings have an exterior surface having a groove therein for engaging the hooks of the curved ends of the longitudinal member, in this case the crayon holders include a surface with ribs that engage with the hooks at the ends of the longitudinal members/ribs in the connector/container case. It appears that said connector container case is configured to snap fit the first and second indicator stick housings to the connector/container case.

While such an interpretation is rather imaginative, it is a stretch, at best. Applicant does not disagree that the self-contained case retains a plurality of crayons. However, Applicant does not agree that it is shown, disclosed, or suggested that the self-contained case forms a connector or that the individual holders are constructed to limit the rotation of the crayons relative to the case. That is, it is not shown in the reference that the individual crayons placed in the case cannot be rotated therein. The Examiner's application of the reference to the claims of the present application is tenuous at best and is not visible from the reference. It is apparent that the self-contained case of OMEGAMARKER® is intended as a storage device. It is equally apparent that

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the crayons, when located therein, don't extend beyond a perimeter thereof. That is, the crayons are to be removed from the self-contained case when used to indicate any temperature, as evidenced by the three crayons in the foreground of the image. Additionally, the crayons must be contained within a perimeter of the self-contained case as the case, as is clearly shown, is intended to be closed thereby forming two layers of crayons, none of which are exposed. The Examiner is to interpret the claims in light of the Specification. As stated in the background of the present application, "Operators desiring to detect several temperatures must carry or locate multiple temperature indicators, which is often tedious." The background further states that "It is difficult for an operator to hold a welding gun in one hand, for example, and two temperature indicator sticks in the other hand while wearing heat-resistant gloves." This is the issue that is readily apparent from the OMEGAMARKER® reference even in light of the Examiner's strained interpretation.

Claim 1 has been amended only to correct a typographical error submitted in the response filed April 18, 2003. As amended, claim 1, in part, calls for a one-piece connector physically connecting the first and second indicator stick housings along different axes.

"A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art ..." MPEP §2123. Additionally, "drawings and pictures can anticipate claims if they clearly show the structure which is contained. ... However, the picture must show all the claimed structural features and how they are put together. ... The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art." MPEP §2125 (emphasis added). The self-contained case of the OMEGAMARKER® reference is not an indicator stick assembly as stated in claim 1 nor would a person of ordinary skill in the art interpret it as such. It is a case to store temperature indicator sticks -- not a connector forming a part of an indicator stick assembly as called for in claims 1 and 10. A person of ordinary skill in the art would also readily recognize that the container case of OMEGAMARKER® is not an indicator stick assembly capable of indicating at least two temperatures. The Examiner's conclusion that such is shown therein is beyond a reasonable interpretation of the figure. As an example, in order for this interpretation to be workable, one would need to insert hot metal into the case to indicate a temperature. A person of ordinary skill in the art would readily appreciate, from looking at the container case of OMEGAMARKER®, that inserting hot metal into the case would severely damage, if not destroy, the case itself. Accordingly, the Examiner's interpretation is simply not a reasonable one.

The Examiner further concludes that:

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The OMEGAMARKER® also includes in the connector/container case ribs for holding the indicator sticks in position, each of said ribs considered to be longitudinal member having curved ends with hooks configured to secure the first and second indicator stick housings to the connector/container case and to prevent rotation of the first and second indicator stick housings. The curved ends have a curved section on each side to said first and second indicator stick housings. The first and second indicator stick housing have an exterior surface having a groove therein for engaging the hooks of the curved ends of the longitudinal member, in this case the crayon holders include a surface with ribs that engage with the hooks at the ends of the longitudinal members/ribs in the connector/container case. It appears that the connector/container case is configured to snap fit the first and second indicator stick housings to the connector/container case.

Applicant does not necessarily disagree that the container case engages the temperature stick housings in a snap fit relation, however, the conclusion that this relationship prevents rotation of the indicator sticks is not supported by the figure. It is clearly apparent that the indicator sticks are rotatable within the recesses of the container case by the orientation of the radial grooves on the indicator stick housings. It would appear, from the Examiner's interpretation, that the Examiner has developed a bias because of Applicant's earlier challenges to the applicability of the reference and the premature finality of the last Office Action. Applicant stresses that Applicant's challenge to an undated reference is not only reasonable, but was necessary for a complete record. Further, once the Examiner provided a date for the reference, the Examiner made the Office Action final, which was clearly premature. Therefore, the Examiner necessitated the challenges. Applicant merely seeks an unbiased, and fair, examination on the merits.

The Examiner next rejected claims 2, 10-15, and 21 under 35 U.S.C. §103(a) as being unpatentable over OMEGAMARKER® in view of Tabachnik. Applicant disagrees.

Claims 2 and 10, in part, call for a dual temperature indicator stick assembly having a pair of advancement mechanisms configured to extend the two temperature indicator sticks from a connector wherein each of advancement mechanisms engage a respective temperature indicator stick. Claim 21, in part, calls for a dual temperature stick assembly having a connector physically connecting the first and second indicator sticks, a pair of resistance mechanism, and a pair of collets.

Tabachnik shows a single advancement mechanism wholly contained within a crayon holder. There is no teaching in Tabachnik for the connection of two such crayon holders nor is there any teaching in Tabachnik for a pair of resistance mechanisms or a pair of collets.

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Additionally, due to the decorative nature of the Tabachnik holder 10, having two such crayon holders connected is not only implausible but beyond any teaching contained therein. Therefore, claims 10 and 21, and the claims that depend therefrom, are patentably distinct over OMEGAMARKER® in view of Tabachnik.

The Examiner rejected claims 1 and 9 under 35 U.S.C. §103(a) as being unpatentable over OMEGAMARKER® in view of Kirk stating that OMEGAMARKER® discloses the recited structure of claim 1 and that Kirk shows a one piece holder for pencils, pen or the like to permit attachment of the connector to an object, in this case a book.

As argued above, OMEGAMARKER® does not disclose a dual temperature indicator stick assembly. OMEGAMARKER® discloses a container case for individual temperature indicators. Forming an assembly having a one-piece connector physically connecting a first indicator stick housing and a second indicator stick housing is not taught therein.

Therefore, should the Examiner consider the above arguments unpersuasive regarding the application of OMEGAMARKER® to the claims of the present application, Applicant now requests a formal final rejection stating all outstanding grounds of rejection as specified in MPEP §706.07 for purposes of appeal.

Applicant also requests a refund in the amount of \$324.00 be deposited to the credit card account indicated in the Credit Card Authorization form submitted with the Response filed April 18, 2003. The additional claims were submitted in response to the Examiner's indicated allowability of claims 2, 3, 4, 7, and 8. Applicant added new claims 22, 23, and 24 to capture the allowable subject matter. The Examiner has now rejected claims 22, 23, and 24 solely based on OMEGAMARKER®, a reference previously considered in the Office action mailed February 27, 2003. The Examiner rejected claim 21 in view of Tabichnik but has rejected the original subject matter of claim 1 again based on OMEGAMARKER®. Under 37 C.F.R. §1.26, "the Commissioner may refund any fee paid by mistake or in excess of that required." The claims for which refund is sought are the result of the Examiner's indicated allowability thereof. In rejecting these claims, solely on the OMEGAMARKER® reference, the Examiner has increased Applicant's expense without requiring further consideration. The fee was paid under Applicant's understanding that the Examiner had applied the OMEGAMARKER® reference to all pending claims and had indicated the allowable subject matter contained therein. That is, the examination of the now cancelled claims was paid for in the original filing fee. As such, applicant requests a refund in the amount of \$324.00 be credited to the credit account indicated above.

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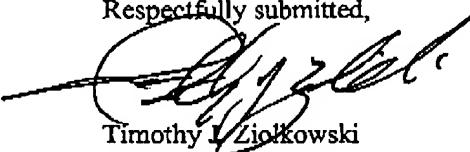
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Therefore, in light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-20.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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